

CHAPTER 15.1-29
NONRESIDENT TUITION AND RECIPROCITY

15.1-29-01. Education of students in bordering states - Payment of tuition.

1. A student may attend school in a bordering state in accordance with section 15.1-29-02 provided:
 - a. (1) The student lives within forty miles [64.37 kilometers] of another state; or
(2) The student lives in a county bordering on another state; and
 - b. The student has received approval from the board of the student's school district of residence.
2. If the school board of the district in which the student resides denies a request for a student's attendance in and payment of tuition to another state, the student's parent may appeal the decision to the three-member committee referenced in section 15.1-29-06.
 - a. If the three-member committee determines that the student meets the terms of subsection 1, the student may attend school in the bordering state and the board of the student's school district of residence shall pay the tuition.
 - b. If the three-member committee determines the student falls within the terms of subdivision a of subsection 1, then the three-member committee shall make its decision using the criteria specified in section 15.1-29-06.
 - c. Notwithstanding the provisions of this section, if a student's school district of residence does not provide for the education of kindergarten students, the district may not pay tuition for a kindergarten student to attend school in a bordering state.
 - d. Any decision by the three-member committee regarding the payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board or by the student's parent to the state board of public school education. A decision by the state board is final.
3. A student attending an out-of-state school under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership. The student's district of residence may reduce any tuition payment it must make to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school.
4. Nothing in this section requires that a school district of residence provide student transportation or payments in lieu of transportation for students attending out-of-state schools.

15.1-29-02. Education of students in bordering states - Contract - Tuition.

1. A school district may contract with a school district in a bordering state for the education of students. A contract between school districts must provide for the payment of tuition at an agreed-upon amount.
2. A student who attends school in a bordering state under a contract provided for by this section is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district of the bordering state for payments as provided in the contract.
3. A school district in this state may not agree to accept a student from a bordering state unless the tuition payable equals or exceeds the amount of state aid that the district would have received from this state for a student in the same grade if that student had been attending school in the bordering state.

15.1-29-02.1. Cross-border attendance - Contract with South Dakota.

1. A student who resides in a North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school

- in North Dakota, provided the superintendent of public instruction has entered into a contract with the secretary of the South Dakota department of education for the cross-border attendance of eligible students.
2. A contract entered under subsection 1 must set forth:
 - a. An application procedure;
 - b. Causes for denial of an application; and
 - c. The manner and notification of acceptance.
 3. A contract entered under subsection 1 must authorize the superintendent of public instruction to count any South Dakota student participating in cross-border attendance under this section for the purposes of determining the amount of state aid to which a school district in this state is entitled. The superintendent of public instruction may not count a North Dakota student participating in cross-border attendance in accordance with the contract for purposes of determining the amount of state aid to which a school district in this state is entitled.
 4. A contract entered under subsection 1 must provide that if there are more students from North Dakota than South Dakota participating in cross-border attendance under this section, the superintendent of public instruction shall forward to the secretary of the South Dakota department of education, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The contract must also provide that if there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract. The superintendent shall pay the cost of cross-border attendance from funds appropriated by the legislative assembly for state aid to schools. Payments received by the superintendent under this subsection shall be deposited in the general fund.
 5. A student who requires special education services may participate in cross-border attendance under this section, provided the contract entered under subsection 1 sets forth each school district's and each state's responsibilities for payment of any excess costs incurred as a result of providing the services to the student.
 6. Each school district may provide transportation to students participating in cross-border attendance under this section. However, the superintendent of public instruction may include only transportation provided within this state for purposes of determining the state transportation aid to which a district is entitled.
 7. Sections 15.1-29-01 through 15.1-29-13 do not apply to students participating in cross-border attendance under this section.

15.1-29-03. Education of students in other districts - Payment of tuition and transportation.

1. After taking into account the best interests of all affected parties, the board of a school district may elect to send its students to another school district. In this instance, the board shall pay for the students' tuition and transportation. The board may arrange, and when petitioned to do so by qualified electors of the district equal in number to at least a majority of those who voted in the most recent annual school district election shall arrange, with other boards to send students to the other districts and to pay for their tuition and transportation.
2. If a district does not provide educational services to an entire grade level, the students in that grade level may attend a public school of their choice outside their district of residence without going through the procedures outlined in section 15.1-29-05. The board of the students' school district of residence shall pay for the students' tuition and transportation. For purposes of determining whether educational services are provided to an entire grade level, districts cooperating with each other in the joint provision of

educational services under a plan approved by the superintendent of public instruction are considered to be a single district.

15.1-29-04. Payment of tuition and transportation by sending districts - Interest on late payments - Notification.

If the board of a school district agrees to pay tuition under this chapter, if it is required to pay tuition under this chapter, or if it is required to pay tuition and transportation under this chapter, the board of the sending district shall pay at least fifty percent of the annual charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due. If payment is not received by the admitting district within sixty days after the date on which payment is due, the admitting district shall notify the superintendent of public instruction.

15.1-29-05. Petition by parent for payment of tuition or tuition waiver.

1. If a student wishes to attend a school district other than the student's district of residence, the student's parent may file a written petition with the board of the student's school district of residence requesting that the board either:
 - a. Pay the tuition required by this chapter in order that the student can attend another school district; or
 - b. Sign a tuition waiver contract with another district that has agreed to admit the student.
2. Within thirty days after receiving the petition, the board of the student's school district of residence shall meet with the student's parent and render a decision regarding the payment of tuition. The board may:
 - a. Agree to pay the tuition;
 - b. Agree to sign a tuition waiver contract with the admitting district; or
 - c. Refuse to pay the tuition or sign a tuition waiver contract.
3. If the board of the student's school district of residence does not render a decision within the thirty-day period, the petition is deemed approved and the board becomes obligated to pay tuition to the admitting district.
4. If the petition is denied, the student's parent may file an appeal with the county superintendent of schools.

15.1-29-06. Petition for waiver of tuition - Appeal - Withholding of state payments.

1.
 - a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and responses. The committee shall base its decision regarding the petition on the grade in which the student is or will be enrolled.
 - b. (1) If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the petition and direct the board of the student's school district of residence to pay the tuition or sign a tuition waiver contract.

- (2) The committee's directive regarding the payment of tuition or the duration of the tuition waiver contract may be for any fixed number of school years, up to the completion of the student's high school education, unless open enrollment is an available option.
 - c.
 - (1) If the student is or during the following school year will be enrolled in any grade from kindergarten through eight and the committee finds the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the petition and direct the board of the student's school district of residence to pay the tuition or sign a tuition waiver contract.
 - (2) The committee's directive regarding the payment of tuition or the duration of the tuition waiver contract is limited to one school year. The student's parent may make subsequent applications for the payment of tuition or the signing of a tuition waiver contract.
 - d. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
- 2. If a student's school district of residence consists of land situated in more than one county, the three-member committee established under subsection 1 must consist of the county superintendent of schools and the state's attorney from the county in which the greatest portion of the school district's land is situated, and an individual appointed for a term of three years by the board of county commissioners representing the county in which the greatest portion of the school district's land is situated.
- 3. If the student's school district of residence does not pay the tuition or sign the tuition waiver contract, as required by this section, the board of the admitting district shall notify the superintendent of public instruction. Upon verification, the superintendent of public instruction shall withhold all state payments to the student's school district of residence until the requisite action has been taken.
- 4. A school district of residence may provide transportation to a student for whom tuition is paid under this section or for whom the payment of tuition is contractually waived. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district.

15.1-29-07. Payment of tuition by parent - Content of tuition contract with parent.

- 1. If the board of a student's school district of residence refuses to pay the tuition or sign a tuition waiver contract in order for the student to attend school in another district and if the committee established under section 15.1-29-06 denies the petition on appeal, the student's parent may pay the tuition.
- 2. If the parent chooses to pay the tuition, the parent shall:
 - a. Submit at least fifty percent of the total amount due on the day of enrollment; and
 - b. Provide the board of the admitting district with a written contract agreeing to pay any remaining balance on or before December thirty-first.

15.1-29-08. Payment of tuition - Kindergarten student.

Repealed by S.L. 2001, ch. 193, § 5.

15.1-29-09. Payment of tuition by federal government.

An admitting district may accept payments under title 1 of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] as tuition for a nonresident student if:

- 1. The student's parent is employed on an installation owned by the federal government;
- 2. The student's parent resides on an installation owned by the federal government; and
- 3. The boards of the student's school district of residence and the admitting district agree to accept the payments in lieu of other tuition for the nonresident student.

15.1-29-10. Tuition contracts - Agreement with federal officials.

A school board may contract with federal officials for the education of students in a federal school.

15.1-29-11. Admission of students - Conditions.

The board of a school district shall admit students from other districts to its schools if:

1. The admission does not create overcrowding; and
2.
 - a. The board of the sending district has entered into a contract with the board of the admitting district regarding the students' attendance;
 - b. Tuition will be paid by the parents of the students from the sending district; or
 - c. The grade level required by the students is not offered by the sending district.

15.1-29-12. Tuition payments - Determination.

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education per student incurred by the admitting district.
2.
 - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
 - b. To the cost of education per student, the admitting district shall add the latest available statewide average per student cost for extracurricular activities and the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
 - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
 - (1) The per student payment multiplied by the admitting district's school size weighting factor; and
 - (2) Any credit for taxes paid to the admitting district by the student's parent.
 - d. The amount remaining is the full cost of education per student incurred by the admitting district. The tuition amount payable for the individual student is the lesser of:
 - (1) The full cost of education per student incurred by the admitting district; or
 - (2) One hundred fifty percent of the state average full cost of education per student.
 - e. Admitting school districts shall charge the tuition amount payable determined in subdivision d multiplied by two hundred percent or four thousand dollars, whichever is greater, if the admitting school district:
 - (1) Is located in an oil-producing county;
 - (2) Is eligible to receive gross production tax revenue in lieu of property taxes;
 - (3) Is located in cities with populations over twenty-four thousand;
 - (4) Has a tax base fewer than twenty square miles;
 - (5) Levies greater than sixty mills for local property taxes;
 - (6) Has student enrollments of greater than four thousand;
 - (7) Has average student growth of over two hundred per year over the preceding five years;
 - (8) Uses portable classrooms; and
 - (9) Has enrollment exceeding school facility capacity.
3. This section does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

15.1-29-13. Tuition payments - Nonresident students.

1.
 - a. Except as provided in this subsection or as otherwise agreed to in the compact on educational opportunity for military children, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. Either the student's district of residence shall pay the tuition to the admitting district in accordance with section 15.1-29-12 or the student's parent shall pay the tuition to the admitting district in accordance with section 15.1-29-07.
 - b. A board may charge tuition for nonresident students enrolled in an approved alternative education program.
 - c. Except as otherwise provided, if a school district fails to charge and collect tuition for a nonresident student, the districts shall forfeit any state aid otherwise payable for the nonresident student.
2.
 - a. The board of a school district may admit a nonresident student from another district in this state offering the same grade level as that in which the student is enrolled without a charge and collection of tuition if the sending and admitting districts have entered into a written contract regarding the student's admission.
 - b. For purposes of determining whether the same grade level is offered, two or more school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district.
 - c. The contract must specify whether transportation is to be provided and, if so, by which district. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student.
 - d. A contract is not necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.
 - e. A school district may admit a nonresident student described in section 15.1-31-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
3. A school district may not charge or collect from a nonresident student, the student's parent, or the student's district of residence any fees or charges not otherwise assessed to all resident students.

15.1-29-14. Student placement for noneducational purposes - Residency determination - Payment of tuition and tutoring charges.

1.
 - a. Except as provided in subdivision b, for purposes of applying this chapter, a student's school district of residence is the district in which the student's custodial parent or legal guardian resides:
 - (1) At the time that a state court, tribal court, director of juvenile court, or the division of juvenile services issues an order requiring the student to stay for a prescribed period in foster care or at a state-licensed child care home or facility;
 - (2) At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, in foster care or at a state-licensed child care home or facility;
 - (3) At the time the student is initially placed in a state-operated institution, even if the student is later placed in foster care or at a state-licensed child care home or facility; or
 - (4) At the time the student is placed voluntarily, by a parent or legal guardian, in a state-operated institution or in a state-licensed child care home, facility, or program, located either within or outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1.
 - b. A determination regarding the student's school district of residence made under subdivision a is valid until the September fifteenth following the determination. On that date and each September fifteenth thereafter, the placing agency or the entity funding the student's placement shall determine the district in which the

student's custodial parent or legal guardian resides and shall notify the district that it is deemed to be the student's district of residence for purposes of this chapter. If, however, the student is placed in accordance with paragraph 4 of subdivision a and the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this subdivision.

2. The student's school district of residence is obligated to pay:
 - a. All charges for tuition upon claim of the admitting district; and
 - b. All charges for tutoring services upon claim of an admitting facility, provided that the tutoring services are delivered by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
3. The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for state aid to schools if, on the September fifteenth after a student placement is made as provided for under subsection 1:
 - a. The student's custodial parent or legal guardian establishes residency outside this state;
 - b. A court orders a termination of parental rights with respect to the student's parents;
 - c. The student no longer has a custodial parent; or
 - d. The superintendent of public instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.
4. If the student is voluntarily admitted to a state-licensed child care home or facility, or to a state-operated institution, the student's parent or, if one has been appointed, the student's legal guardian may appeal a determination under section 15.1-29-05 regarding the payment of tuition by filing a petition with the county superintendent of schools. Within fifteen days of receiving the petition, the three-member committee established under section 15.1-29-06 shall consult with the boards of the affected school districts and with the student's parent or legal guardian and render a decision regarding responsibility for the payment of tuition charges.
5. If the student's district of residence does not pay the required tuition and tutoring charges, the admitting district or facility shall notify the superintendent of public instruction. Upon verification that tuition and tutoring charges are due and unpaid, the superintendent shall withhold all state aid otherwise payable to the student's school district of residence until the total amount due has been fully paid.
6.
 - a. An amount equal to the state average per student elementary or high school cost, depending on the student's grade of enrollment, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility.
 - b. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state, within the limits of legislative appropriations, from funds appropriated for the payment of special education contract charges in the case of a student with disabilities or from state aid payments to schools in all other cases. For purposes of this subdivision, "actual costs" includes the cost of a summer program if the program is a condition of placement at a residential facility that has been determined by a placing agency or entity to be an appropriate placement for a student.
7. If a student with disabilities placed in accordance with this section reaches age eighteen and continues to receive special education and related services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. The obligations of the student's school district of residence as provided in subsection 2 and the obligations of the state as provided in subsection 3 are applicable to all students described in this subsection.

8.
 - a. The placing agency or entity funding the student's placement shall provide written or electronic notice regarding an initial placement and all subsequent placements of a student to the superintendent of the student's school district of residence and to the superintendent of the admitting district:
 - (1) Within five working days after a placement is made under court order;
 - (2) Within five working days after an emergency placement is made; or
 - (3) At least ten working days prior to any other placement.
 - b. If, however, the student's parent or legal guardian voluntarily places the student in a state-operated institution or in a state-licensed child care home, facility, or program, located outside the student's school district of residence, including those defined in sections 25-01.2-01 and 50-11-00.1, and if the placement is privately funded, the administrator of the facility or program in which the student is placed shall determine the student's school district of residence and provide the notification required by this section.
 - c. The notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.
 - d. The placing agency shall afford the student's school district of residence reasonable opportunity to participate in permanency planning for the student.
9. Notwithstanding this section, educational services provided to a student by the youth correctional center are not subject to the payment of tuition and tutoring charges by either the student's school district of residence or the superintendent of public instruction.
10. For purposes of this section, "custodial parent" means the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides. If the student resides with both parents, then both are custodial parents.

15.1-29-14.1. Placement of student by out-of-state agency or entity - Provision of services - Contract - Responsibility for tuition and charges.

A school district in this state may not enroll a student who is placed in the district for purposes other than education by an out-of-state agency or entity and whose school district of residence is located in another state, unless:

1. This state and the student's state or school district of residence have entered a contract that addresses responsibility for the payment of all tuition and tutoring charges; or
2. Other contractual arrangements exist governing responsibility for the payment of all tuition and tutoring charges.

15.1-29-15. Levy for tuition payments.

If the board of a school district approves tuition payments for students in grades seven through twelve or if the board is required to make tuition or tutoring payments under this chapter, the board may levy an amount sufficient to meet such payments, pursuant to section 57-15-14.2.